

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
CIVIL TRIAL MINUTES**

Phoenix Division

HON: NEIL V. WAKE

CV 15-01132-PHX-NVW DATE: 12/14/2017

Austin Flake, et al v. Joseph Arpaio, et al
Plaintiff(s) Defendant(s)

Deputy Clerk: Rebekka Walder Court Reporter: Laurie Adams

Stephen Montoya and Richard Trujillo with Plaintiffs Austin Flake and Logan Brown
Plaintiff(s) counsel

Evan Hiller and Jeffrey Leonard on behalf of Defendants
Defense counsel

PROCEEDINGS: / X / JURY TRIAL / / COURT TRIAL / / VOIR DIRE / / JURY SWORN

Trial Day # 6 Waiver of Jury trial filed n/a

8:45 a.m. Reconvene. Jury is not present. Final Jury Instructions and other matters discussed. 9:49 a.m. Recess.

9:55 a.m. Reconvene. Jury is present. Austin Flake is further examined. Plaintiffs rest. Defendants' request sidebar. Defense rests. Plaintiffs request to call a rebuttal witness. Request denied. 10:19 a.m. Jury is excused from the courtroom and court remains in session. Discussion held. The Court determines that because Defense witnesses were called to testify during the course of the trial, Plaintiffs are entitled to call their rebuttal witness. 10:22 a.m. Jury is present and informed that the Plaintiffs will call their rebuttal witness. Brian Sands is sworn and examined. Sidebar discussion held. The Court will exclude the witness as not an impeachment witness, and therefore subject to prior disclosure. Witness is excused. Plaintiffs rest. 10:45 a.m. Jury is excused and court remains in session. Final Jury Instructions further discussed. 11:07 a.m. Recess.

11:32 a.m. Reconvene. Jury is not present. Final Jury Instructions further discussed. 12:23 p.m. Jury is present. 12:24 p.m. The Court dismisses the Jury for a lunch break, and court remains in session. Defense counsel makes an offer of proof on their excluded experts. The Court will mark the reports of Dr. Nancy Bradley and M.L. "Andy" Anderson, and the second report of George J. Hogge as Exhibits 75, 76, and 77 respectively, to be part of the record, not admitted into evidence. Verdict Form finalized. Plaintiffs present their oral motion for directed verdict. Plaintiffs' oral motion for directed verdict is DENIED.

The parties stipulate to the admission of Exhibit 21. Defendants' oral Rule 50 Motion for Judgment as a Matter of Law is argued to the Court. For reasons stated on the record, Defendants' oral Motion is DENIED. Discussion held regarding Exhibit 45. Defendants are directed to further redact the exhibit. 1:03 p.m Recess.

1:40 p.m. Reconvene. Jury is present. The Court reads the Final Jury Instructions to the Jury. Closing Arguments commence. 3:12 p.m. Jury is excused from the courtroom and court remains in session. Matters discussed. 3:14 p.m. Recess.

3:31 p.m. Reconvene. Jury is present. Closing Arguments continued. Bailiff is sworn to take charge of the Jury. 5:01 p.m. Jury leaves the courtroom to commence deliberations, and court remains in session. Discussion held regarding discovery requests for the production of charts presented to or produced by the Maricopa County Attorneys Office. The Court directs counsel to cooperate to find out the whereabouts of the many feet-long chart or outline of the case provided by the County Sheriff's Office to the County Attorney, and if in existence, provide to Mr. Montoya. Conversely, if the document is not found, determine what happened to it, why it was not maintained, and who was responsible for its preservation. In addition, the Court directs the parties to investigate the status of the graphic power consumption chart prepared by Ms. Steinberg and her staff which was not presented to the Grand Jury. If found, the document should be provided to Mr. Montoya, and if not found, a determination should be made as to why it was not preserved and who was responsible. The Court does not set a time frame for the completion of this investigation at this time, but rather advises the parties to update the Court as to the status within a few days so that a determination of a reasonable schedule can be made. Jury question discussed. 5:22 p.m. Jury is present and the Court addresses a Juror question. 5:24 p.m. Jury returns to the jury room to continue deliberations, and court remains in session. 5:26 p.m. Recess.

6:22 p.m. Reconvene. Jury is not present. The Court advised the parties that whatever verdict is reached, the Court will not direct entry of judgment at this time, and rather reserve entry of judgment until further conferring with the parties on the status of the remainder of the case. 6:23 p.m. Jury is present. Verdict is read as follows: "We the Jury, duly empaneled and sworn, find on Plaintiffs' claim for malicious prosecution: in favor of Defendants Joseph and Ava Arpaio and Defendant Maricopa County." The Court advises the Jury that the admonition has been lifted and that they are discharged from their jury service.

6:25 p.m. Court is adjourned.